

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MANUEL NIEVES,	§
	§ No. 661, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0107022700
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 1, 2010

Decided: January 13, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 13th day of January 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Manuel Nieves, filed an appeal from the Superior Court's September 20 and September 22, 2010 orders adopting the August 31, 2010 report of the Superior Court Commissioner,¹ which recommended that his third motion for postconviction relief pursuant to

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

Superior Court Criminal Rule 61 be denied.² The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.³ We agree and affirm.

(2) The record reflects that, in March 2002, Nieves was found guilty by a Superior Court jury of 32 criminal charges, including 20 counts of Rape in the First Degree in connection with the sexual abuse of his 8 year-old goddaughter. He was sentenced to a total of 322 years of Level V incarceration. This Court affirmed Nieves’s convictions on direct appeal.⁴ This Court also affirmed the Superior Court’s denials of his first two postconviction motions.⁵

(3) In this appeal from the Superior Court’s denial of his third postconviction motion, Nieves claims that the Superior Court should not have denied his postconviction motion on procedural grounds. He contends that the “retroactively applicable right” exception of Rule 61(i)(1) and the “miscarriage of justice” exception of Rule 61(i)(5) overcome any procedural bars to the Superior Court’s consideration of the merits of his claims.

² The Superior Court’s amended September 22, 2010 order was filed after receipt of Nieves’s objections to the Commissioner’s report.

³ Supr. Ct. R. 25(a).

⁴ *Nieves v. State*, Del. Supr., No. 352, 2002, Steele, J. (Feb. 11, 2003).

⁵ *Nieves v. State*, Del. Supr., No. 381, 2004, Ridgely, J. (May 18, 2005); *Nieves v. State*, Del. Supr., No. 722, 2009, Ridgely, J. (June 24, 2010).

Specifically, Nieves contends, the minor victim's §3507 videotaped statement to the investigator, which was shown to the jury at trial, contained material indicating that the investigator believed the victim's accusations in violation of *Miles v. State*, Del. Supr., No. 257, 2009, Berger, J. (Nov. 23, 2009) and *Stevens v. State*, 3 A.3d 1070 (Del. 2010). Nieves also claims that his counsel provided ineffective assistance by failing to object to the admission of the §3507 statement at trial.

(4) Under Delaware law, the Superior Court must first apply the procedural requirements of Rule 61 prior to considering the merits of a claim raised in postconviction proceedings.⁶ It is undisputed that Nieves's current postconviction claims are barred as untimely under Rule 61(i)(1) and are procedurally barred as repetitive under Rule 61(i)(2). Moreover, we conclude that Nieves cannot overcome the time and procedural bars for the following reasons. Rather than establishing a "retroactively applicable right," the *Miles* and *Stevens* cases merely restate the time-honored principle that experts may not usurp the jury's function by opining on a witness's credibility.⁷ Moreover, there is no evidence that the admission of the victim's §3507 statement, which was cumulative of her in-court testimony, constituted a "miscarriage of justice." Therefore, his ineffectiveness claim

⁶ *Younger v. State*, 588 A.2d 1121, 1127 (Del. 1991).

⁷ *Stevens v. State*, 3 A.3d at 1073, 1077.

also fails.⁸ As such, we conclude that the Superior Court's judgment must be affirmed.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).